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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,583	11/27/2001	Geoffrey Alan Cleary	60136.0149USU1	7292
23552 7590 08/11/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			EXAMINER VAN HANDEL, MICHAEL P	
			ART UNIT 2424	PAPER NUMBER
			MAIL DATE 08/11/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/994,583

Applicant(s)

CLEARY ET AL.

Examiner

MICHAEL VAN HANDEL

Art Unit

2424

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-25,27,28.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Son P Huynh/  
Primary Examiner, Art Unit 2424

Continuation of 11:

Regarding claims 1, 2, 12, and 28, the applicant argues that Ellis et al. does not disclose a method for dynamically storing compressed audiovisual data, where at least one of a plurality of content is stored dynamically and has a variable duration, and where the storing dynamically further includes allocating a portion of memory in the mass storage device, utilizing a predetermined amount of said allocated portion of memory, allocating an additional portion of memory in the mass storage device in response to utilizing said predetermined amount of said allocated portion of memory and repeating said utilizing and said allocating said additional portion of memory until all of said at least one of said plurality of content having a variable duration is stored. The applicant specifically argues that Ellis et al. merely discloses a program guide system that records, at a remote server, programs and associated program guide data on storage in response to record requests generated by the program guide and how recorded programs may be retrieved from the remote server for playback by a user. The examiner respectfully disagrees.

As noted in the Office Action mailed 3/17/2009, Ellis et al. discloses that the remote media server may continually prefetch the next 15 minutes of data as needed. A user may start with the first 15 minutes of content. As the user advances toward minute 15, remote media server checks to see if minutes 15 to 30 are already cached. If they are, the cached copy may be used for the user. If not, the media server may prefetch and pre-decode a suitable amount, so that the video stream for the user is not interrupted. The media server may continually prefetch the next 15 minutes of data (p. 7, paragraph 96 & p. 19, paragraph 199). The examiner interprets this to be dynamically storing audiovisual data, and further interprets this to be allocating a portion of memory in the storage device, utilizing a predetermined amount of said allocated portion of memory, allocating an additional portion of memory in the mass storage device in response to utilizing said predetermined amount of said allocated portion of memory and repeating said utilizing and said allocating said additional portion of memory until all of said at least one of said plurality of content having a variable duration is stored, as currently claimed. As further noted in the Office Action mailed 3/17/2009, Applicant's specification describes sporting events as content of variable duration (p. 10, lines 20-21 of Applicant's specification). Ellis et al. discloses that a user may record sporting events at the remote media server (p. 3, paragraph 60; p. 10, paragraph 122; p. 13, paragraph 148; & Fig. 18a). As such, the examiner maintains that Ellis et al. teaches storing content of variable duration, as currently claimed.

Ellis et al. further discloses that a user may be able to cache programs in real-time. As noted above, where the program is cached to provide VCR-like playback to the user, the program is cached in portions, with each additional portion being cached at a suitable point before the beginning or end of the currently cached portion (p. 19, paragraphs 199, 200). A user may indicate a desire to record a program on remote media server 24 by pressing a "PAUSE" key on remote control 40. A record request is then issued to remote media server 24. Remote media server begins recording the program at this point and until the program is finished or until the user fast-forwards to the end of the cached copy (p. 15, paragraph 165 & p. 19, paragraph 200). The examiner notes that the duration of this content changes over time as more of the content is cached, and that the total recorded duration may depend on whether the user fast-forwards to the end or not. This also meets the limitation of storing content of variable duration, as currently claimed.